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GOVERNMENT GAZETTE

BOLETIM OFICIAL

SUPPLEMENT

(No. 2)

(SUPLEMENTO)

GOVERNMENT OF GOA, DAMAN AND DIU

Legislative Assembly of Goa, Daman and Diu

Legislature Department

LA/A/7/1800/69

In exercise of the powers conferred on him by Rule 117 of the Rules of Procedure and Conduct of Business of the Legislative Assembly of Goa, Daman and Diu, the Speaker has ordered publication of the following Bill for general information.

The Goa, Daman and Diu Sales Tax (Amendment) Bill, 1969

(Bill No. 11 of 1969)

A Bill further to amend the Goa, Daman and Diu Sales Tax Act, 1964.

Be it enacted by the Legislative Assembly of Goa, Daman and Diu in the Twentieth Year of the Republic of India as follows:—

1. Short title and commencement. — (1) This Act may be called the Goa, Daman and Diu Sales Tax (Amendment) Act, 1969.

(2) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

2. Amendment of section 2. — In section 2 of the Goa, Daman and Diu Sales Tax Act, 1964 (hereinafter referred to as the principal Act),—

(i) after clause (e), the following clause shall be inserted namely:—

“(ee) “importer” means a dealer who brings any goods into Goa, Daman and Diu, or to whom any goods are dispatched from any place outside Goa, Daman and Diu;”;

(ii) after clause (l), the following clause shall be inserted, namely:—

“(ll) “Tribunal” means a Tribunal constituted under section 3A;”;

(iii) in clause (m), after the words “within such period” the words “as may be prescribed” shall be inserted.

3. Insertion of new section 3A. — After section 3 of the principal Act, the following section shall be inserted, namely:—

“3A. Tribunal. — (1) Subject to the provisions of this section, the Government shall constitute a Tribunal consisting of one member or as many members as it thinks fit to discharge the functions conferred on the Tribunal by or under this Act:

Provided that where the Tribunal consists of one member, that member shall be a person who has held a civil judicial post for at least ten years or who has been a member of the Central Legal Service (not below Grade III) for at least three years or who has been in practice as an advocate for at least ten years, and where the Tribunal

consists of more than one member, one such member shall be a person qualified as aforesaid.

(2) If the Tribunal consists of more than one member, the Government shall appoint one of the members of the Tribunal to be the Chairman thereof.

(3) The qualifications of the member or members constituting the Tribunal and the period for which such member or members shall hold office, shall be such as may be prescribed.

(4) The Government may terminate the appointment of any member of the Tribunal before the expiry of the term of his office if such member —

(a) is adjudged as an insolvent, or

(b) engages during his term of office in any paid employment outside the duties of his office, or

(c) is, or becomes, in any way concerned or interested in any contract or agreement made by or on behalf of the Government or participates in any way in the profit thereof or in any benefit or emoluments arising therefrom, or

(d) is in the opinion of the Government, unfit to continue in office by reason of infirmity of mind or body, or

(e) is convicted of an offence involved in moral turpitude:

Provided that before terminating the appointment of any member under this sub-section, such member shall be given a reasonable opportunity of making representation.

(5) Any vacancy in the membership of the Tribunal shall be filled up by the Government as soon as practicable.

(6) If the Tribunal consists of more than one member, the functions of the Tribunal may be discharged by any of the members sitting either singly or in benches of two or more members, as may be determined by the Chairman.

(7) Where the Tribunal consists of more than one member and they are divided on any matter arising for decision before them, the decision shall be the decision of the majority, if there be a majority; but if the members are equally divided, they shall state the point or points on which they differ and the case shall be referred by the Chairman for hearing on such point or points to one or more of the other members of the Tribunal, and such point or points shall be decided according to the majority of the members of the Tribunal who heard the case, including those who first heard it.

(8) Subject to such conditions and limitations as may be prescribed, the Tribunal shall have power to award costs, and the amount of such costs shall be recoverable from the person who is ordered to pay the same as an arrear of land revenue.

(9) The Tribunal shall for the purpose of regulating its procedure and disposal of its business make regulations not inconsistent with the provisions of this Act and the rules made thereunder:

Provided that the regulations so made shall not have effect until they are approved by the Government and published in the Official Gazette.

(10) Notwithstanding anything contained in this section, the Government may, by notification

in the Official Gazette, confer on any Tribunal constituted or functioning under any other law for the time being in force, the powers conferred on a Tribunal by or under this Act and thereupon such other Tribunal shall be deemed to be a Tribunal constituted under this section in relation to the said law notwithstanding anything inconsistent in such other law:

Provided that the provisions of sub-sections (3) and (4) shall not apply to the Tribunal on which powers are so conferred.

(11) Any proceedings before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code. 45 of 1860.

4. Amendment of section 7. — In clause (II) of sub-section (3) of section 7 of the principal Act —

(1) in sub-clause (a) after the words "of goods of the class or classes" the following brackets, words and figure shall be inserted, namely: —

"(other than the goods or classes of goods taxable at the first point of sale in the series of sales by successive dealers, in pursuance of notification under section 8)";

(2) In sub item (iv) of sub-clause (a), after the words "manufacture of goods for sale", the words "within Goa, Daman and Diu" shall be inserted.

5. Amendment of section 11. — In sub-section (1) of section 11 of the principal Act, for the words and figure "under section 4 of this Act", the words and figures "under section 4 or section 6 of this Act" shall be substituted.

6. Insertion of new section 14A. — After section 14 of the principal Act, the following section shall be inserted, namely:—

"14A. Taxable turnover where certificate of registration is cancelled. — Notwithstanding anything to the contrary in this Act, when the certificate of registration of any dealer is cancelled on the ground of discontinuance of his business, the price of all goods purchased by him on the strength of his certificate of registration shall be included in his taxable turnover."

7. Amendment of section 24. — For the proviso to sub-section (6) of section 24 of the principal Act, the following proviso shall be substituted, namely:—

"Provided that, where such person re-sells, or uses in the manufacture of goods for sale within Goa, Daman and Diu, any goods purchased by the dealer while carrying on business before such succession, he shall be entitled to such deductions in respect thereof as are permissible under sub-section (3) of section 7, had the re-sale or use in manufacture for sale, as the case may be, been effected by the dealer himself."

8. Amendment of section 27. — In section 27 of the principal Act,—

(a) in sub-section (2),—

(i) in clause (b), for the word "directed" the words "directed; or" shall be substituted;

(ii) after clause (b) as so amended, the following clause shall be inserted, namely:—

“(c) pass such other orders as it may think fit.”;

(b) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(2A) (a) in the case of an order passed in appeal by the appellate authority under sub-section (2), a second appeal shall lie to the Tribunal within sixty days of the date of passing of the order.

(b) the Tribunal may admit the second appeal referred after the period of sixty days referred to in clause (1), if it is satisfied that the appellant had sufficient cause for not preferring the appeal in that period.

(2B) No appeal under sub-section (2A) or sub-section (3B) shall be entertained by the Tribunal, and no revision application under sub-section (3) shall be entertained by the Commissioner, unless such appeal or revision application, as the case may be, is accompanied by satisfactory proof of the payment of tax or penalty or both that may be due:

Provided that the Tribunal or the Commissioner, as the case may be, may, if it or he thinks fit, for reasons to be recorded in writing, entertain any appeal or revision application against any such order without making the payment as aforesaid, if the appellant or, as the case may be, the applicant furnishes such security for such amount as it or he may direct.

(2C) In disposing of an appeal, the Tribunal shall have same powers as that of the appellate authority under sub-section (2).”;

(c) in sub-section (3),—

(i) in the opening paragraph, the words “and subject as aforesaid, the Government may, in like manner, revise any order passed by the Commissioner” shall be omitted;

(ii) in the first proviso, the words “or the Government, as the case may be,” shall be omitted;

(d) after sub-section (3), the following sub-sections shall be inserted, namely:—

“(3A) the dealer may, at his option, file a second appeal under sub-section (2A), or make an application for revision to the Commissioner under sub-section (3), and where the dealer has exercised such option he shall be precluded from filing an application for revision under sub-section (3), or, as the case may be, from filing a second appeal under sub-section (2A).

(3B) Where an order is passed by the Commissioner of his own motion under sub-section (3), an appeal shall lie to the Tribunal from that order within sixty days and an appeal filed after that period may be admitted if the Tribunal is satisfied that the appellant had sufficient cause for not filing the appeal within that period.”.

9. Amendment of section 28.—In section 28 of the principal Act,—

(i) for sub-sections (1) and (2), the following sub-sections shall be substituted, namely:—

“(1) Within sixty days from the date of passing by the Tribunal of any order under sub-section (2A) or sub-section (3B) of section 27 affecting any liability of any dealer to pay tax under this Act, such dealer or the Commissioner, as the case may be, may, by application in writing (and where the application is made by the dealer, accompanied by a fee of one hundred rupees), require the Tribunal to refer to the Court any question of law arising out of such order and, subject to the other provision contained in this section, the Tribunal shall, as soon as may be after the receipt of such application draw up a statement of the case and refer it to the Court.

(2) If the Tribunal refuses to state the case which it has been required to do, on the ground that no question of law arises, the dealer or the Commissioner, as the case may be, may, within thirty days of the communication of such refusal, either:—

(a) withdraw the application (and if he does so, any fee paid shall be refunded), or;

(b) apply to the Court against such refusal.”;

(ii) in sub-sections (3) to (7), for the word “Government’s” the word “Tribunal’s” and for the word “Government” wherever it occurs, the word “Tribunal” shall be substituted.

10. Insertion of new section 31A.—After section 31 of the principal Act, the following section shall be inserted, namely:—

“31A. **Penalty for contravening provisions regarding collection of tax by dealers.**—If the Commissioner is satisfied that any person has acted in contravention of the provisions of section 16, he may, after giving such person a reasonable opportunity of being heard, direct him to pay, by way of penalty, a sum not exceeding one and a half times the tax collected in contravention of the said provision, and the amount of tax so collected.”.

11. Amendment of section 35.—In section 35 of the principal Act, in sub-section (3), for clause (a), the following clause shall be substituted, namely:—

“(a) of any of the particulars referred to in sub-section (1) for the purpose of an investigation or prosecution under this Act or under the Indian Penal Code or under any other enactment for the time being in force; or”.

12. Amendment of section 36.—In section 36 of the principal Act,—

(a) in sub-section (2),—

(i) clause (a) shall be renumbered as clause (aa) of that sub-section; and

(ii) before clause (aa) as so renumbered, the following clause shall be inserted, namely:—

“(a) the period for return of goods by purchasers under clause (m) of section 2;”;

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Every rule made under this Act shall be laid, as soon as may be after it is made, on the table of the Legislative Assembly while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly agrees in making any modification in the rule, or the Legislative Assembly agrees that the rule should not be made, the rule shall, thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”.

Statement of objects and reasons

In response to public requests including that of the Goa Chamber of Commerce and Industries, it has been found necessary to constitute an Appellate Sales Tax Tribunal for enabling aggrieved parties to seek redress through an Appellate Tribunal as in other parts of the country.

The object of the provisions of the Bill is mainly to constitute a Tribunal in this behalf. It is also proposed to define the term ‘Importer’ as the absence of a clear definition has given scope for diverse interpretation of this term.

It has been observed that the language of Section 7(3) as it exists at present, can permit a possible argument that the raw material used for manufacture of goods could be even for those which are sold outside the Territory. The intention of this Section is to permit deductions only in respect of raw materials used for manufacture of goods for sale within this Territory. Hence to eliminate this lacuna it is proposed to amend section 7(3) so as to make it clear beyond any doubt that the use of raw material involved should be for manufacture of goods for sale within the Territory of Goa, Daman and Diu.

In the course of revenue audit of the Sales Tax receipts, the Accountant General, Maharashtra, has raised the objection that the word “resells” occurring in the proviso to Section 24(6) cannot be used in wide sense to cover “manufacture” also. It is therefore proposed to amend section 24(6) so as to cover sale of manufactured goods for the purpose of deduction contemplated in the Act. The loop-hole in this section will be plugged by inserting the words “or uses in the manufacture for sale” after the words “resells/resale” occurring in the proviso to section 24(6). The amendment of this section will enable, in the case of resale of the goods, the second dealer to have the benefit of deductions in a subsequent resale or in utilizing the goods for manufacture.

A suitable provision has also been made to comply with the recommendation of the Committee of the Delegated Legislation of the Legislative Assembly for laying before the Assembly the Rules framed by Government under the Act.

Some other amendments of a procedural nature have also been provided for in this Bill. These are intended to plug loop-holes or otherwise to tone up the Sales Tax administration.

Memorandum regarding delegated legislation

New Section 3A which is sought to have been inserted by clause 3 of the Bill, empowers the Tribunal to make regulations for regulating its procedure and disposal of its business. These are matters of detail and the delegation of such legislative powers is of a normal character.

Financial memorandum

As indicated in sub-section (10) of the proposed section 3A, the intention of the Government is to entrust the work of the Appellate Sales Tax Tribunal to the Administrative Tribunal functioning in this Territory by making it broad-based. However, if the Government, at any later stage, decides to constitute an independent Appellate Sales Tax Tribunal as per sub-section (1) of the new Section 3A, the following staff will have to be appointed:—

- (1) One Member.
- (2) One Sheristedar.
- (3) One stenographer, and
- (4) One peon.

The expenditure involved will then be as follows:—

Recurring expenditure	Rs. 25,100.00 p. a.
Non-recurring expenditure	Rs. 1,500.00
Total	Rs. 26,600.00

Panaji,
August 3rd, 1969.

D. B. BANDODKAR
Chief Minister

Assembly Hall
Panaji,
August 22nd, 1969.

R. L. SEGEL
Secretary to the Legislative
Assembly of Goa, Daman and Diu.

Administrator's recommendation under section 23 of the Goa, Daman and Diu Union Territories Act, 1963.

In exercise of the powers conferred upon him by clause (a) of sub-section (1) of section 23 of the Government of Union Territories Act, 1963, the Administrator of Goa, Daman and Diu has recommended to the Legislative Assembly of Goa, Daman and Diu the introduction and consideration of the Goa, Daman and Diu Sales Tax (Amendment) Bill, 1969.

LA/A/7/1798/69

In exercise of the powers conferred on him by Rule 117 of the Rules of Procedure and Conduct of Business of the Legislative Assembly of Goa, Daman and Diu, the Speaker has ordered publication of the following Bill for general information.

The Goa, Daman and Diu (Judicial Commissioner's Court)
Regulation (Amendment) Bill, 1969

(Bill No. 12 of 1969)

A Bill further to amend the Goa, Daman and Diu
(Judicial Commissioner's Court) Regulation 1963.

Be it enacted by the Legislative Assembly of Goa,
Daman and Diu in the Twentieth Year of the Repu-
blic of India as follows:—

1. **Short title.**—This Act may be called the Goa,
Daman and Diu (Judicial Commissioner's Court)
Regulation (Amendment) Act, 1969.

2. **Amendment of section 19.**—In the
Goa, Daman and Diu (Judicial Commis-
sioner's Court) Regulation, 1963, sec- 10 of 1963.
tion 19 shall be re-numbered as sub-sec-
tion (1) of that section and after sub-sec-
tion (1) as so re-numbered, the following
sub-section shall be inserted, namely:—

“(2) Notwithstanding anything to the con-
trary contained in sub-section (1), the Adminis-
trator may, after consultation with the Judicial
Commissioner, direct by notification in the Offi-
cial Gazette, that from such date as may be
specified in the said notification the language
of the subordinate courts shall be English or
such one or more of the languages in use in Goa,
Daman and Diu as may be so specified and dif-
ferent languages may be specified in respect of
subordinate courts in different areas of Goa,
Daman and Diu.”

Statement of objects and reasons

Section 19 of the Goa, Daman and Diu (Judicial
Commissioner's Court) Regulations, 1963 pertains to
the language of the Courts in this Union territory.
It lays down that the language of the Court of the
Judicial Commissioner and the subordinate courts
shall be the languages which immediately before the
commencement of the said Regulation was the land-
guage of the Tribunal da Relacao or such subordi-
nate Courts as the case may be, or English.

As Portuguese language was the language of the
Tribunal da Relacao and the subordinate Courts
immediately before the commencement of the 1963
Regulation, the subordinate Judiciary is using Por-
tuguese language as the Court language in day to
day working as also in recording Judgements. Since
the judgements and the day to day proceedings in
the lower Courts are being recorded in Portuguese
it has been observed that this results in lot of delay
at the appellate stage, as these records have to be
translated in English. The Bill is to amend section 19
of the Goa, Daman and Diu (Judicial Commissioner's
Court) Regulation, 1963 so as to switch over the work
which is being carried on in the Subordinate Courts
in Portuguese, to English or such one or more of the
languages in use, in the Union territory of Goa, Da-
man and Diu as may be prescribed.

As far as the Districts of Daman and Diu are
concerned the Administration proposes to specify
English and Gujarati as the languages of the subor-
dinate Courts therein. As far as the District of
Goa is concerned, the Administration intends to spe-
cify English and Marathi/Konkani as the languages
of the subordinate courts therein.

Memorandum regarding delegated legislation

Clause 2 of the Bill seeks to insert a new sub-sec-
tion in section 19 of the Goa, Daman and Diu (Judi-
cial Commissioner's Court) Regulation 1963. This
new sub-section empowers the Administrator to
specify the language of the Subordinate Courts. The
Delegation of powers to specify the language of the
Subordinate Courts is necessary to give sufficient
time in effecting the switch over from Portuguese
language to English and Marathi/Konkani/Gujarati.
Otherwise the Delegation of power is of normal
character.

Panaji,
August 18th, 1969.

ANTHONY D'SOUZA
Law Minister

Assembly Hall
Panaji,
August 22nd, 1969.

R. L. SEGEL
Secretary to the Legislative
Assembly of Goa, Daman and Diu.